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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF NEVADA**
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9 ELENA RODRIGUEZ-MALFAVON,)

10 Plaintiff,)

11 vs.)

2:12-cv-1673-APG-PAL

12 CLARK COUNTY SCHOOL)
DISTRICT, EDWARD GOLDMAN and)
13 ANITA WILBUR,)

14 Defendants.)
15)
16)
17)

18 **MOTION IN LIMINE**

19 COMES NOW Plaintiff Elena Rodriguez-Malfavon and moves the Court to
20 limit testimony and evidence regarding anything which happened after the Plaintiff
21 was transferred in August, 2010. This motion is based on the pleadings and papers
22 on file together with the attached points and authorities and exhibits.

23 Dated this 26th day of August, 2016.

24
25 //Richard Segerblom
RICHARD SEGERBLOM
701 E. Bridger Ave #520
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27 Attorney for Plaintiff
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POINTS AND AUTHORITIES

This case involves a long-term Clark County School District (“CCSD”) administrator, Plaintiff Rodriguez-Malfavon, who was demoted in 2011 after receiving two unsatisfactory annual evaluations in 2010 and 2011. Exh. 1 and 2. In granting in part and denying in part the Defendants’ motion for summary judgment the Court ruled that there is a question of fact as to whether the first unsatisfactory evaluation was issued in retaliation for the Plaintiff engaging in protected activity. Thus the sole issue for the jury to decide is whether the 2010 evaluation was retaliatory or not.

Given the limited nature of the trial there is no need to introduce evidence and testimony concerning things which happened after the Plaintiff received the 2010 negative evaluation and asked the Defendant’s counsel to stipulate to that limitation. Defense counsel rejected the stipulation and indicated they think the 2011 evaluation is relevant because the fact that it was also unsatisfactory is admissible to prove that the 2010 evaluation was issued legitimately and not in retaliation. To date, Defense counsel has provided no legal authority to support this position.

The two evaluations in question were given by two different individuals covering two different job assignments. The 2010 evaluation covered the Plaintiff’s work performance in the purchasing department, the 2011 evaluation covered the Plaintiff’s performance doing different duties at the AIS High School. Furthermore, the evaluations were issued by two different administrators. The Plaintiff rejects the Defendant’s assertion that her unsatisfactory work performance in 2011 is admissible to prove that her work performance in 2010 was unsatisfactory.

Legal Argument

Rodriguez-Malfavon's 2011 annual evaluation is not relevant to the issue that the jury will decide in this trial - namely, whether her 2010 annual evaluation was issued in retaliation for her protected activity. Federal Rules of Evidence Rule 401 states:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

The question presented here is whether the fact that a different administrator observing Rodriguez-Malfavon work at a different location and in a different job is relevant to prove that her previous administrator legitimately believed her work performance was unsatisfactory.

It is not clear under what basis the Defendant will try to assert that the 2011 evaluation is relevant. Assuming the Defendant believes that the fact that Rodriguez-Malfavon received a negative evaluation in 2011 shows that poor performance is a character trait, Rule 404(a) specifically provides that "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Rule 404(a) therefore precludes the admission of the 2011 evaluation.

If the Defendant is asserting that the 2011 evaluation is evidence of a "bad act," Rule 404(b) states that "[e]vidence of crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Thus Rule 404(b) also precludes admission of the 2011 evaluation.

1 *Neuren v. Adduci, Mastriani, Meeks & Schill*, 43 F.3d 1507 (D.C.Cir.1995),
2 is instructive and supports the Plaintiff's position. In that case, the plaintiff's
3 employer sought to introduce evidence from previous employers to prove the
4 plaintiff could not perform her job. The court held that Rules 404(a) and (b) both
5 precluded that evidence. Likewise, here, Rules 404(a) and (b) should preclude the
6 evidence of a subsequent job in this case.

7 Accordingly, based on the Federal Rules of Evidence Rodriguez-Malfavon
8 believes that her 2011 annual evaluation is not relevant and should be precluded
9 from the trial.

10 Dated this 26th day of August, 2016.

11 //Richard Segerblom
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EXHIBIT 1

9998-500007

CCF-7
Rev. 11/08Clark County School District
PERFORMANCE EVALUATION REPORT — Central Office Administrator

Employee Name: Elena Rodriguez-Malfavon Department: Purchasing & Warehousing
 Title: Coordinator III Social Security No. (last 4 digits) 2413 Date: 6/24/10
 Years as Administrator: 8 Years in CCSD: 20 Page 1 of: 1

Analysis of performance, completion of previous directions, directions and other factors which are pertinent to the performance of a probationary/postprobationary administrator.

Performance Indicators/Analysis: (indications of performance in relation to established standards.)

	Satisfactory	Needs Improvement*	Not Satisfactory*
A. Assessment/Analysis/Planning	X		
B. Supervision and Evaluation			X
C. Leadership			X
D. Parent/Community Relations	X		
E. Organization and Management		X	
F. Intra-District Relations	X		
G. Other: (i.e. professional responsibilities, etc.)		X	

(*Any area(s) marked "Needs Improvement" and/or "Not Satisfactory" require(s) further documentation and references. A performance rating of NOT SATISFACTORY in any category results in an overall rating of Not Satisfactory.)

Summary/Analysis of Performance (comments required regardless of rating):

Ms. Rodriguez-Malfavon has not adequately demonstrated the abilities required of an administrator/professional technical employee in the Purchasing Department. While she does not have a purchasing background, it was anticipated that she would be brought up to speed slowly, utilizing expected managerial skills while learning the basics of the purchasing function. She instead has approached her job as if it were a support staff position, showing up for eight hours per day (including breaks which are not part of an administrator's minimum eight hour work day) as discussed in summaries of conference dated November 9, 2009 and March 11, 2010. From day one in the department, she has been more concerned with documenting perceived slights and the behavior of others (as discussed in a summary of conference dated November 9, 2009) rather than looking to increase her knowledge and responsibilities and, consequently, her value to the department. She has involved support staff in her personal issues with Purchasing Department management and has attempted to undermine management on policy involving support staff as documented in a disciplinary document dated December 3, 2009 and a summary of conference dated March 11, 2010. She was placed in a supervisory position over a purchasing team in October 2008. She subsequently expressed reservations about her ability to do the job. She was removed from supervisory duties over Purchasing staff as per a memo from Bramby Tollen dated November 17, 2009. Administrative assistance was provided to Ms. Rodriguez-Malfavon on multiple occasions in the form of conferences and documents. No significant improvement has been noted.

Previous Directions:

Please see attached milestones sheet. Most goals were met or started, however Ms. Rodriguez-Malfavon's responsibilities were shifted during the year negating some of the early direction. One significant goal that was not met was the establishment of a quarterly supplier fair.

Directions:

Focus on providing value as an administrator by seeing tasks through to satisfactory completion.

I certify that I have supervised and evaluated the professional performance of the above named ☐ probationary ☒ postprobationary employee, and I certify that to date this school year the administrator's overall performance ☐ is ☒ is not satisfactory.

AI Elena Rodriguez-Malfavon Coordinator IV Alan W. [Signature] 6/24/10
 Title Title Signature Date
E. [Signature] C III 6-24-10
 Employee Signature Title Date

☒ A response will be made within timelines established by the applicable negotiated agreement.

☐ A response was submitted on _____ Date _____ Signature of Supervising Administrator Receiving Response _____ Date _____

EMPLOYEE: I certify that this report has been discussed with me. I understand my signature does not necessarily indicate agreement.

031 Distributor:

Original/White: Division Superintendent, then Administrative Personnel Services, Human Resources Division
 2nd Copy/Yellow: Supervisor - Work Location File 3rd Copy/Pink: Employee

CCSD
Clark County School District

CCSD000113

Project	Milestones				
	July	August	September	October	November
1.1 KPIs-Individual	Prepare complete Test Scripts for future Support Pack	Learn Testing Software for SAP	Cross-train Catalog load	Lead RZ20 functions for 1 week	Lead RZ20 functions for 1 week
	Prepare for Initial Catalog Picture Load	Catalog Picture Load	Catalog Picture Load	Catalog Picture Load	Catalog Picture Load
1.2 Documentation	Learn and document key process at Purchasing Maintenance	Learn, review, and document bid process at Purchasing Maintenance		Learn and document key process at Purchasing Maintenance	Lead Enhancement Plan Documentation and Implementation
	Participate class advance Excel 2007	Work towards Purchasing Certification CPPB	Attend Bid training class	Work towards Purchasing Certification CPPB	Work towards Purchasing Certification CPPB
2.1 Training	Lead Reading Group Main office	Lead Reading Group Maintenance Office w/Charlie	Create "Soft Skill" Training	Create Central Training	Teach "Soft Skill" Class for Administrators
	Work with Kids to create/identify certification training program	Work with Kids to create/identify certification training program	Work with Kids to create/identify certification training program	Work with Kids to create/identify certification training program	Work with Kids to create/identify certification training program
2.2 Staff Self-Job Descriptions	Lead Supplier Appreciation Committee	Lead Supplier Appreciation Committee	Lead Supplier Appreciation Committee	Lead Supplier Appreciation Committee	Lead Supplier Appreciation Committee
	Lead spin off of Health & Fitness Committee	Actively participate on Health & Fitness Committee	Lead spin off of Health & Fitness Committee	Actively participate on Health & Fitness Committee	Actively participate on Health & Fitness Committee
3.1 Internal-Committees	Attend Team Meeting and publish minutes	Submit data to PWMG Connection News Letter	Attend Team Meeting and publish minutes	Attend Team Meeting and publish minutes	Submit data to PWMG Connection News Letter
	Provide information on PWMG Web	Attend Production Support Meeting/SSS Team	Provide information on PWMG Web	Attend Production Support Meeting/SSS Team	Provide information on PWMG Web
3.2 District Communications	Set up supplier quarterly fair	Hold supplier fair	Attend Outreach/Chamber meeting	Set up supplier quarterly fair	Hold supplier fair
	Attend Outreach/Chamber meeting	Attend Outreach/Chamber meeting	Attend Outreach/Chamber meeting	Attend Outreach/Chamber meeting	Attend Outreach/Chamber meeting
3.3 External Communications					

EXHIBIT 2

9998—500007

CCF-7
Rev. 11/08

Clark County School District

PERFORMANCE EVALUATION REPORT — CENTRAL OFFICE ADMINISTRATOR

Employee Name: Elena Rodriguez-Malfavon Department: AISHS #879
 Title: Coordinator Social Security No. (last 4 digits): 2413 Date: 06/02/11
 Years as Administrator: 9 Years in CCSD: 21 Page 1 of 2

Analysis of performance, completion of previous directions, directions and other factors which are pertinent to the performance of a probationary/postprobationary administrator.

Performance Indicators/Analysis: (indications of performance in relation to established standards.)

	Satisfactory	Needs Improvement*	Not Satisfactory*
A. Assessment/Analysis/Planning	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. Supervision and Evaluation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
C. Leadership <i>N.A.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Parent/Community Relations <i>N.A.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Organization and Management	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
F. Intra-District Relations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Other: (i.e. professional responsibilities, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(*Any area(s) marked "Needs Improvement" and/or "Not Satisfactory" require(s) further documentation and references. A performance rating of NOT SATISFACTORY in any category results in an overall rating of Not Satisfactory.)

Summary/Analysis of Performance (comments required regardless of rating):

Please refer to page two.

Previous Directions:

1. June 24, 2010 evaluation: Focus on providing value as an administrator. This directive has not been met.

Directions:

1. Focus on providing value as an administrator.
2. Comply with all directives, past and present.

I certify that I have supervised and evaluated the professional performance of the above named ☐ probationary ☒ postprobationary employee, and I certify that to date this school year the administrator's overall performance ☐ is ☒ is not satisfactory.

Anita Wilbur AISHS Principal *Anita Wilbur* 06-06-11
 Print Type Name of Supervisor Title Signature Date
[Signature] Coordinator *[Signature]* 6-22-11
 Employee Signature Title Date

☒ A response will be made within timelines established in the applicable negotiated agreement.

☐ A response was submitted on _____ Date

Signature of Supervising Administrator Receiving Response Date

EMPLOYEE: I certify that this report has been discussed with me. I understand my signature does not necessarily indicate agreement.

031 Distribution: Original/White: Division Superintendent, then Administrative Personnel Services, Human Resources Division
 2nd Copy/Yellow: Supervisor - Work Location File
 3rd Copy/Pink: Employee

CCSD
CLARK COUNTY
SCHOOL DISTRICT

CCSD000290

9998-500010

CCF-10 (Rev. 09/09)

Clark County School District
PERSONNEL RECORD — CONTINUATION SHEET

Name: Elena Rodriguez-Malfavon Social Security No. (last 4 digits): 2413
 CCF- 7 Date: 06/02/11 Page No: 2 of 2

A. Assessment/Analysis /Planning Elena Rodriguez-Malfavon needs to demonstrate improvement in this area. Observations of staff and facilities management (i.e. shelter in place, fire keys distribution) were not completed in a timely manner, as evidenced by a disciplinary document dated May, 26, 2011.

B. Supervision and Evaluation Elena Rodriguez-Malfavon is not satisfactory in this area. She was assigned the supervision and evaluations of support staff at the Academy for Individualized Study High School (AISHS). The registrar's evaluation was due on April 1, 2011. She had to be reminded by this supervisor to complete the support staff evaluation. The evaluation was issued 12 days late, due as of April 1, 2011, as stated in a disciplinary document dated May 26, 2011.

C. Leadership; Not Applicable

D. Parent/Community Relations: Not Applicable

E. Organization and Management Elena Rodriguez-Malfavon is not satisfactory in this area, as evidenced by a disciplinary document she received dated May 26, 2011. As one part of her assigned duties dealing with the facility, Mrs. Rodriguez-Malfavon was assigned responsibility for ensuring that all employees have the required fire alarm keys. In checking, I discovered that no employee had been issued the required fire alarm key, which is an extremely serious matter.

F. Intra-District Relations Elena Rodriguez-Malfavon is satisfactory in this area.

G. Other Elena Rodriguez-Malfavon is not satisfactory in this area, as evidenced by the following concerns outlined in a disciplinary document dated May 26, 2011.

"On May 3, 2011 you logged into the AISHS attendance calendar and entered a departure time of 12:12 pm and a return time of 1:00 pm while at site #128 where you were to meet with Mr. Waldron, executive director of the Education Services Division. When I was in the same building, I noticed you still talking with the secretary at 1:15 pm. You never corrected your time on the attendance calendar. To date, the record has still not been corrected."

"On February 28, 2011, you were present for a training session on the usage of the time clock by every employee. Everyone, including you, were instructed that March 2011, would be a month of practice implementation, after which, it would be mandatory for all employees to begin using the computerized time clock effective April 1, 2011. You were advised that I would be reviewing the time clock records at the end of April, 2011, to ensure compliance. Only beginning on April 18, 2011 did you begin to use the time clock, 17 days after the mandated start time."

Elena Rodriguez-Malfavon's overall performance is rated as not satisfactory.

E. Rodriguez-M 6-22-11 Anita Wilbur Anita Wilbur 06-06-11
 Signature of Employee Date Print/Type Name of Supervising Administrator Signature Date

031 Distribution: Original/White: Area Associate/Division Superintendent, then Human Resources Division
 2nd Copy/Yellow: Supervising Administrator - Work Location File 3rd Copy/Pink: Employee



CCSD000291

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2016, I served the foregoing Motion in Limine by ECF transmission to counsel for the Defendant.

//Richard Segerblom//
RICHARD SEGERBLOM, ESQ.
Attorney for Plaintiff